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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DIANA THEODORE,

Plaintiff,

v.

AMERICAN EXPRESS NATIONAL BANK,

Defendant.

No. 3:23-cv-03710-AMO

**JOINT INITIAL CASE
MANAGEMENT STATEMENT**

1 The Parties to the above-captioned action (the “Action”) submit this Joint Case Management
2 Statement pursuant to the Standing Order for All Judges of the Northern District of California dated
3 January 17, 2023, Civil Local Rule 16-9, and Rules 16 and 26(f) of the Federal Rules of Civil
4 Procedure. Counsel for the Parties conferred by Zoom on October 12, 2023 for a Rule 26(f) conference.

5 **1. Jurisdiction & Service**

6 This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331. Subject
7 matter jurisdiction arises under the Truth in Lending Act, as provided at 15 U.S.C. § 1640(e).

8 The Parties do not dispute that the Court has personal jurisdiction over the Defendant, nor
9 dispute that venue is proper in this Court. Defendant has accepted service of the Class Action
10 Complaint (the “Complaint”).

11 **2. Facts**

12 *Plaintiff statement:*

13 This is a nationwide consumer class action case. Plaintiff alleges American Express violated
14 the Truth in Lending Act (15 U.S.C. § 1601, *et seq.*) by imposing unlawful interest charges on Plaintiff
15 and the proposed class. Plaintiff brings claims individually and on behalf of all American Express
16 consumer credit card cardmembers who carried a card balance from at least one billing period to
17 another between March 2022 and today on a variable rate credit card. Plaintiff also alleges violations
18 of the California Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.*) individually and
19 on behalf of all American Express consumer credit card cardmembers who carried a card balance from
20 at least one billing period to another between March 2022 and today on a variable rate credit card while
21 a resident of the State of California.

22 *Defendant statement:*

23 Defendant asserts that Plaintiff’s claims are meritless but Plaintiff’s dispute must be resolved
24 through individual arbitration pursuant to the arbitration provision in Plaintiff’s American Express
25 Platinum Card Cardmember Agreement. Defendant filed a motion to compel arbitration and stay the
26 action on September 22, 2023, which is set for hearing on February 29, 2024.

27 **3. Legal Issues**

1 A threshold legal question is whether Plaintiff's claims are subject to mandatory arbitration, as
2 Defendant argues and Plaintiff denies. In addition to the legal question whether to certify the putative
3 class, the core legal issue on the merits in this action asks whether Defendant violated the Truth in
4 Lending Act, and California consumer protection law, by applying interest rate increases to
5 cardmembers' protected balances and subsequent transactions without the required statutory notice
6 and without qualification for any exception to the notice requirement, including the statutory exception
7 for certain variable rate card programs.

8 **4. Motions**

9 **a. Pending motions**

10 On September 22, 2023, Defendant filed a motion to compel arbitration and stay the action.
11 Dkt. 18. Plaintiff will file a response to that motion by November 21, 2023, and Defendant will file its
12 reply on or before January 20, 2024. A hearing on the motion to compel arbitration and stay the action
13 is scheduled for February 29, 2024.

14 **b. Prior motions**

15 There are no prior motions.

16 **c. Anticipated future motions**

17 Plaintiff anticipates filing a motion, pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3), to certify
18 the proposed class of American Express consumer credit cardmembers who carried a balance during
19 the relevant period. Both Parties may file summary judgment motions and *Daubert* motions, as
20 appropriate.

21 **5. Amendment of Pleadings**

22 The Complaint was filed on July 26, 2023. Dkt. 1. Plaintiffs reserve the right to move to amend
23 the Complaint to conform to the evidence uncovered in the course of discovery upon a demonstration
24 of good cause, under Fed. R. Civ. P. 15.

25 **6. Evidence Preservation**

26 The Parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored
27 Information and agree to take reasonable and proportionate steps to preserve evidence relevant to the
28

1 issues reasonably evident in this action. The parties will discuss agreement on an ESI protocol at the
2 appropriate time, if required, after a ruling on Defendant's motion to compel arbitration.

3 **7. Disclosures**

4 By agreement of the parties, initial disclosures pursuant to Rule 26(a)(1) of the Federal Rules
5 of Civil Procedure will not be exchanged prior to the Court's ruling on Defendant's motion to compel
6 arbitration and stay the action.

7 **8. Discovery**

8 Defendant objects to all discovery and discovery-related activity prior to a ruling on its pending
9 motion to compel arbitration and incorporates this objection throughout this Joint Initial Case
10 Management Statement.

11 **a. Discovery Taken to Date**

12 To date, no discovery has been taken in this action.

13 **b. Scope of Discovery**

14 Plaintiff anticipates that discovery will address issues concerning liability, damages, class
15 certification, and defenses.

16 **c. Proposed Limits or Modifications to Discovery Rules**

17 Plaintiff believes that this case will not warrant an increase from the presumptive limits on the
18 number of depositions set forth in Fed. R. Civ. P. 30. But the parties agree to meet and confer regarding
19 the appropriate number of depositions. If necessary, the Parties will seek the Court's assistance in
20 resolving any dispute about modifications to the discovery rules.

21 **d. E-discovery**

22 The Parties intend on reaching agreement on a protocol governing the production of
23 electronically stored information ("ESI") that will govern document production and discovery in this
24 case, if required, after a ruling on Defendant's motion to compel arbitration. If necessary, the Parties
25 will seek the Court's assistance in resolving any e-discovery disputes.

26 **e. Discovery Plan**

27 The Parties agree to a stay in discovery pending the outcome of Defendant's motion to compel
28 arbitration and stay the action.

1 The Northern District of California’s Guidelines for the Discovery of Electronically Stored
2 Information, Guideline 2.02(d) instructs the Parties to adopt procedures “so that discovery occurs first
3 from sources most likely to contain relevant and discoverable information and is postponed or avoided
4 from [other] sources.” Plaintiff proposes that if and when discovery commences in this action, that
5 documents should be produced on a rolling basis, and that certain custodians and categories of
6 documents should be prioritized for production. Privilege logs would then also be produced on a rolling
7 basis.

8 **f. Discovery Disputes**

9 There are no discovery disputes at this time.

10 **g. Protective Order**

11 The Parties have agreed to adopt this District’s model Stipulated Protective Order for Standard
12 Litigation (copy attached as Exhibit A) in this action, if required, after a ruling on Defendant’s motion
13 to compel arbitration.

14 **9. Class Actions**

15 Plaintiff anticipates that she will move, pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3), to certify
16 a class consisting of all American Express consumer credit card cardmembers who carried a card
17 balance from at least one billing period to another between March 2022 and today on a variable rate
18 credit card. All counsel of record for the Parties have reviewed the Procedural Guidance for Class
19 Action Settlements.

20 **10. Related Cases**

21 The Parties are not aware of any cases that concern substantially the same parties, transactions,
22 happenings or events, or would entail substantial duplication of labor if heard by different judges.

23 **11. Relief**

24 Through this action, Plaintiff seeks (i) certification of the proposed Class and Subclass,
25 including appointment of Plaintiffs’ counsel as Class Counsel; (ii) actual damages, punitive and
26 statutory damages, restitution, and injunctive relief prohibiting the defendant from engaging in the
27 wrongful conduct alleged in the Complaint; (iii) reasonable attorneys’ fees, costs, and pre-and-post-
28 judgement interest; and (iv) such other or further relief as the Court may deem just and proper.

1 **12. Settlement and ADR**

2 The Parties have not engaged in settlement discussions. The Parties have met and conferred
3 regarding ADR and agree that efforts to resolve this case are not appropriate at this time.

4 **13. Other References**

5 The Parties agree that the case is not suitable for reference to non-binding arbitration, a special
6 master, or the Judicial Panel on Multidistrict Litigation, pending a ruling on Defendant's motion to
7 compel arbitration.

8 **14. Narrowing of Issues**

9 The Parties are unable to agree at this stage of the proceedings to narrow the issues before the
10 Court, but agree to remain in contact about ways to potentially narrow issues.

11 **15. Expedited Trial Procedure**

12 The Parties do not believe that this is the type of case that can be handled under the Expedited
13 Trial Procedure of General Order 64, Attachment A.

14 **16. Scheduling**

15 The Parties agree to a stay in discovery pending the Court's ruling on Defendant's motion to
16 compel arbitration and stay the action. A hearing on that motion is set for February 29, 2024.

17 **17. Trial**

18 The Parties have requested a trial by jury. The Parties estimate that a trial may last between one
19 and two weeks.

20 **18. Disclosure of Non-party Interested Entities or Persons**

21 Plaintiff filed her Certificates of Interested Entities on October 19, 2023. ECF No. 32.
22 Defendant filed its Certificate of Interested Entities on October 20, 2023. ECF No. 33.

23 **19. Professional Conduct**

24 The attorneys of record for the Parties have reviewed the Guidelines for Professional Conduct
25 for the Northern District of California.

1 DATED this 26th day of October, 2023.

Respectfully submitted,

2 HAGENS BERMAN SOBOL SHAPIRO LLP

3 By /s/ Shayne C. Stevenson

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ATTESTATION PURSUANT TO CIV. L.R. 5-1(i)(3)

I hereby attest that concurrence in the filing of the foregoing document has been obtained from each of the other Signatories.

/s/ Shayne C. Stevenson

Shayne C. Stevenson